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POLITICAL SCIENCE QUARTERLY

PROPERTY RIGHTS UNDER THE NEW MEXICAN CONSTITUTION

THOSE who sympathize with the revolution in Mexico all agree that among its chief objects were (1) the creation of a class of land-owning small farmers, and (2) the correction of a system under which, it is claimed, the land and natural resources of the country, to the injury of the native population, were falling into the hands of a few favored individuals, in many cases absentee foreigners. The attempt to bring about these reforms, with their necessary effect on vested rights, is certain to cause discontent. The task is complicated in the case of Mexico, furthermore, by two facts: first, the ownership of lands and concessions by foreigners, chiefly American and British, either directly or as stockholders in Mexican corporations or in foreign corporations authorized to hold property in Mexico; and second, the success of the Roman Catholic church, despite the prohibitions in the constitution of 1857, in getting control of great properties, as it is claimed, through interposed persons, either priests or laymen, and through commercial corporations,¹ bound at least morally to pass on the ownership to persons devoted to the church, and to pay the income to ecclesiastical authorities. The makers of the new Mexican constitution have embodied in Article 27 the outline of their solution of these difficulties, leaving to the congress and the state legislatures the task of filling in details. This article, therefore, interests Americans probably more than any other in the constitution, both practically, as a possible

¹ Luis Cabrera, *The Religious question in Mexico*, pages 7, 8.

source of international dispute or as a matter of personal interest, and theoretically, as a study in social reform. From the point of view of drafting, both in clearness of expression and in organization of material, Article 27 leaves much to be desired; but the main points of the system there laid down are evident.

The points covered may be grouped under four heads: First, state or national control of property rights; second, the protection of individual property; third, land ownership; and fourth, concessions.

I. State or National Control of Property Rights

Article 27 begins with the statement that the property of all lands and waters within the limits of the national territory belongs originally to the nation, which "has held and holds" the right to transfer the dominion of these waters and lands to individuals, thus constituting private property. This principle is contrary to the theory of ultimate ownership in the states which prevails in the United States,¹ and marks clearly the Mexican conception of the nation, not the state, as successor of the feudal overlordship. Federal ownership of public lands in the United States results either from grants by the thirteen original states or from succession by the United States to the rights of the sovereign in territory acquired since the Revolution. Texas, coming into the United States as a state, retained all its public lands. In the constitutions of the western states it is expressly provided that there shall be no interference with the right of the federal government to transfer its public lands to individuals; but once transferred, the conditions of ownership are determined by the law of the state. Much the same condition will in practice probably result from the provisions of Article 121 of the Mexican constitution providing that property, real and personal, shall be regulated by the law of the state in which it is situated, and from the consideration that no power to legislate in regard to real estate in general is given to the federal congress.

¹New York Constitution I, 10; South Carolina XIV, 3; Wisconsin IX, 3; *Shiveley v. Bowlby*, 152 U. S. 1.

The federal congress, however, as representative of the nation,¹ may exercise an extensive power of limitation of the use of real property, similar to the so-called police power usually exercised by the state in the United States, so that in Mexico direct influence on land of the central government is clearly far greater than would be possible under our system. This situation brings into relief the theory of a more highly centralized state held in Mexico. From many points of view this police power is properly placed with the national government. In the United States the importance of limitations on the use of property in the national interest has been indirectly acknowledged by purchase of great forest areas to protect navigable, often inter-state streams, and by the whole system of national forests, restricting cutting of timber and devastation by stock in watersheds of national importance. Such action has frequently been taken against bitter opposition by the state in which the forest is situated. The interest to be protected in such a case is national and not local, and not infrequently that interest runs contrary to the desire of the people of the state to exploit to the utmost their own resources.

In Mexico the property in certain minerals and in water in the federal control cannot be transferred from the nation to individuals. Water in the federal control includes perennially flowing streams emptying into the sea² crossing two states or forming state or national boundaries, and lakes whose outlets flow into such streams, with their banks and beds. The right to work the mines or to use the water for power or irrigation may be granted as a concession. This is a familiar Mexican rule; but the present constitution makes a noteworthy change by adding a number of minerals to the list of those reserved to the nation. The most important of these are coal, petroleum and natural gas—all by the former mining law expressly declared to be the property of the owner of the soil.³ This provision seems to be confiscatory; the person formerly the owner of

¹ Art. 73, XXXI.

² See Constitution of 1857, Art. 72, XXII; Wheless Compendium, Art. 873.

³ Wheless Compendium, Art. 879.

the coal or oil underlying his land is so no more, though its value may have been the most important element in the purchase price. It is to be assumed that the government will take into consideration the claims of such owners in granting concessions to develop the coal or oil which they previously owned.

In the United States, minerals are as a rule the property of the owner of the soil, and rights to the use of water belong to the riparian owner. The state and not the nation has jurisdiction over mines and waters except for the control by the federal government of the public lands and of navigable or international waters. The states are thus limited, so far as control over mines is concerned, to making provision for the safety and health of miners and to preventing waste of oil or gas. In many western states the use of water is, however, the subject of concessions through state law,¹ and in a few cases is expressly declared to be public property.² The United States has granted mines and power sites on streams on the public domain as it has granted land, the title passing to the purchaser and the property being then governed by state law. The policy of the government, however, is undergoing a change. The laws creating the forest reserve withdrew large tracts of land from settlement or from possibility of private ownership, and the government now leases the right to graze stock on these tracts and also sells standing timber under contract. Ownership remains in the United States, and the government can determine the conditions of exploitation under these concessions. A similar policy is being developed in regard to water power, through lease by the United States of powers situated on the public domain, and through the right of the United States to prevent the building of dams on, or the taking of water from, navigable or international streams, thus giving to the government a large share in the control of such streams and power development at these dams. The same policy is also proposed for the development of coal, oil and gas on the public lands.

¹ California XIV, 1; Idaho XV, 1-6.

² Colorado XVI, 5; North Dakota XVII, 210; Wyoming VIII, 1.

Instead of granting the lands absolutely to private individuals and thus transferring the control of the development of the minerals to the state—a course which implies absolute ownership by the individual—the government leases the property and provides in the lease for reasonable development.¹

II. *The Protection of the Property of Individuals*

Constitutional protection of the property of individuals has two branches: limitation on the action of the legislature of the nation or of the state in passing confiscatory statutes, and limitation on the power of the executive to interfere arbitrarily with private rights. As the *individual* rights proclaimed by the Mexican constitution cannot be abridged or suspended² and as they are placed under the protection of the federal courts,³ they are made as safe against action by legislatures or executives as a constitutional provision can make them. The right of the individual to his property as against administrative action and action of other persons is protected by Article 14, which provides that property or rights cannot be taken except by an action before a court in conformity with the essential forms of procedure and by authority of a law, and by Article 4, which prohibits the taking away from a person of the fruits of his labor, except by judicial decision. Article 107 authorizes the issuance by the court of a writ against a public authority who is accused of acting in excess of his power, to compel him to appear and justify his action. This writ must be promptly obeyed, and it thus affords a means of bringing an administrative officer before a judge for decision as to his right to act.

The right of property is protected against the legislature by Article 14, which forbids retroactive legislation, and by Article 27, which prohibits its expropriation, except for public utility and on payment. Article 27 of the constitution of 1857 contained the same provision with the additional requirement, very common in our states, that the payment must precede the taking. The change of language in the new section would make

¹ See H. R. Bill no. 406, 64th Cong., 1st sess.

² Art. 1.

³ Arts. 103, 107.

it appear that payment is no longer a prerequisite to the taking of the property, though it may be made so by statute. The guarantee against legislative action, however, is restricted by the reserved rights in the nation, which must be exercised by congress, to impose limitations on private property in the public interest and to regulate the development of natural resources capable of appropriation, "to equitably distribute the public wealth and to secure its conservation." With this object in view, measures are to be taken to divide large estates, to encourage small farms, to aid agriculture, and to prevent the destruction of natural resources with consequential damage to property and to society. If private property must be taken for any of these purposes, it must be taken under condemnation proceedings as for a public utility; but the words of the constitution do not oblige the payment of damages which may result from legislation limiting the use of property but not taking it. In the United States, limitations on the use of private property in the public interest may be authorized under the police power, that is, the action of the legislature in the interest of the public well-being, which action is usually exercised by the states and not the nation; and by the power of condemnation for a public interest; but our view of a public interest which will justify the taking of private property or the creation of limitations thereon is not so wide as that expressed in Article 27. For instance, it would seem that the Mexican congress may limit the cutting of trees on watersheds to protect the flow of waters, while in the United States we have probably not yet reached the point where such legislation would be upheld under the police power as a limitation on the right of individuals to use their own property as they wished.

Another important difference between the American and Mexican constitutions in this respect is that there is nothing in the Mexican constitution similar to the requirement of the Fifth and Fourteenth Amendments of the United States constitution that property should not be taken except by due process of law. This phrase is held to authorize courts to decide whether the legislature was right in believing a certain interference with property rights to be in the public interest, and it

therefore constitutes a check on the legislature. The Mexican courts have no such express authority; Article 14 requires only a court proceeding; it does not authorize the court to pass upon the propriety of the law. The Mexican provision is a very different thing from our due-process clause; it constitutes a limitation on the executive, obliging him to act in accordance with the law, rather than a limitation on the legislature, affecting the right to pass the law. The Mexican courts, however, may base on Article 27, authorizing the legislature to limit the use of private property in the public interest, a power in the courts to decide whether a limitation enacted by law is in the public interest; and if they do so, much the same result may be achieved as under our theory of the police power limited by the words "due process of law." By section 107 the courts are prohibited from passing expressly on the validity of a law in general, but they may, by consistently refusing to permit acts under the law, accomplish the same results.

The importance to property owners of the requirement that compensation must be paid for property taken in the public interest is limited by the provisions of paragraph 8 of the article, which fix the price to be paid as compensation at the value of the property on the official tax lists, plus ten per cent. The increase in value caused by improvements subsequent to the date of assessment is to be determined by judicial decision, which is also to be the manner of determining the value of objects not fixed in the tax lists. The wording of this paragraph makes it doubtful whether the "date of assessment" means the date on which the assessment was actually made, or whether the last payment of taxes constitutes an acceptance of the assessment as of that date. Assessments on lands were not frequently changed under the old Diaz régime, so that if the Diaz valuations are taken as at the time of their original assessment, and the increase in value caused by improvements since that time is allowed for, the result will be very different from that reached if the value is taken as fixed at the date of the last payment of taxes, and increase in value from that date only is assumed. As a matter of fact, there has been no opportunity in a large part of Mexico to make any

careful assessment during the disordered period, at least since the fall of Madero, so that it would seem fair to suspend the operation of this paragraph until a new assessment has been made.

Evidently, then, the constitutional protection of property interests against the legislature by the requirement that they shall not be taken except for public utility and on payment of indemnity is much weakened by the broad police power vested in the congress, and by the paragraph fixing the amount of the indemnity. The full scope of the provision cannot be safely estimated, as different congresses may take different views of what are the limitations necessary in the public interest, and as the courts may assume an important jurisdiction to restrain congress. If the courts do not take such action, the situation would seem to be much the same as would result in the United States if the courts did not exercise any control over the police powers of the legislatures. The serious guarantee will be the intelligence of the electorate, and the character and wisdom of the men who represent it in the congress.

III. *Land Ownership*

The justification of the revolution will depend largely upon its fair and satisfactory settlement of the question of land ownership. The provision of land for the peons is declared to be a principal object of the revolution, and the formation of a land-holding class of small farmers interested in the stability of the national institutions is proclaimed to be the only safeguard for the Mexican republic.

The difficulty which many Latin-American countries have found in dealing with foreigners as property owners, because of the action of foreign governments in support of their citizens, finds active expression in Article 27. Foreigners are not disturbed as foreigners in the ownership of property already held in the republic. By paragraph 7, subdivision 1, of Article 27, foreign corporations or individuals cannot in the future, however, acquire any right to ownership of lands or waters, or any concession for the exploitation of mines, waters or mineral combustibles in the republic. The nation may grant to the indi-

vidual foreigner the same rights to acquire land or concessions as to the individual Mexican, provided the foreigner agrees with the secretary of foreign relations to consider himself as a Mexican as regards such property and not to invoke the protection of his own government in respect thereto, subject to the penalty of losing to the nation the property that he has so acquired. There was a somewhat similar provision in Article 33 of the old constitution, which provided that foreigners must submit to the "judgment and sentences of the tribunals" without the power to seek other recourses than those which the law grants to Mexicans, and the mining law permits grants of concessions to foreigners only on the express condition that the property "should remain subject to the Mexican laws, and that no right or claim based on foreign citizenship can be urged in respect thereto, and that the tribunals of the republic alone have jurisdiction to decide all questions which may arise in respect to such properties, to the exclusion of all foreign intervention."¹ The former law, however, lacks the sanction of Article 27, the loss of the property, if intervention of a foreign nation is asked. As the nation must act through congress, a law would seem necessary to permit a foreigner to acquire property, even on giving up the protection of his government, and as congress may limit the right in other directions, the exact status of the foreigner as to the future acquisition of land depends on the will of congress.

Foreigners may not be permitted even under this condition to acquire ownership (*dominio directo*) of land or water within a zone of one hundred kilometers (sixty-two and a half miles) from the frontier, or of fifty kilometers from the coast. By the existing statute law no foreigner could acquire real estate or mining rights within a zone of eighty kilometers from the frontiers without a special permit from the executive of the union.² The new constitution does not prohibit the granting to foreign individuals of concessions to mine within the forbidden zone, but the existing law in regard to the eighty-kilometer limitation remains in force until changed by congress.

¹ Wheless, Art. 925; Art. 59, Mexican Mining Law.

² Wheless, Art. 901.

Foreigners or foreign corporations now owning real estate are not affected in their ownership by these provisions, but a very troublesome question arises in respect to the right of foreigners to take land by inheritance or by will, and also in respect to the right to enforce a debt secured by real estate, or in any case where the debtor has nothing but real estate to satisfy his obligation. In such cases an individual may secure the assent of the authorities to his acquiring the property if it be not in the forbidden zone; but no foreign corporation, and no individual in cases where land is in the forbidden zone, can enforce any rights which involve taking title to real estate. There is nothing, however, to prevent the transfer for the purpose of a debt to a Mexican, or an authorized foreigner if the land be not in the forbidden zone, who could then take proper proceedings and hold property under an agreement to turn over the proceeds of a sale or the annual returns to the real creditors. Where land within the forbidden zone is intended to go to foreign heirs or devisees, the decedent might by will grant to an interposed person¹ as a sort of trustee to hold or sell for the benefit of the devisee. Where no such provision had been made by will, state laws could provide for the appointment by the proper court of a person to hold property for such persons, and for his sale of the property within a limited time. Such legislation might be possible by the federal congress in aid of its treaty power. No legislature in direct contravention of the constitution can grant even a limited right of ownership, but an arrangement for holding by an interposed person would seem well within the scope of ordinary international relations, and if included in a treaty would be "the supreme law of the land."² Congress, if the states fail to do so, might then legislate to provide necessary machinery to give effect to the rights guaranteed.

Most of the American states put foreigners upon the same basis as citizens in regard to the ownership of property, and those state constitutions which prohibit the ownership by foreigners of real estate usually except property now owned by foreigners, and also allow them and their heirs to hold property

¹ *Persona interposita*.

² Art. 133.

for a certain length of time in order to make a sale. For example, the constitution of Oklahoma prohibits aliens from owning or acquiring title to land in the state, but requires the legislature to enact laws whereby aliens or their heirs hereafter acquiring real estate shall dispose of it within five years. The section of the constitution furthermore is not applicable to aliens who may become *bona fide* residents of the state, or to lands now owned by aliens in the state.¹

A minor motive of the revolution in the land question is the determination to do away with the holding of real estate by the church. Paragraph 2 of Article 27 deals with religious associations, which are prohibited from acquiring, possessing or administering real estate or capital secured by real estate. What they hold at present in their own names or through others becomes the property of the nation, and any person may denounce it if in the apparent ownership of an individual. Presumptive proof that it belongs to such an association shall be sufficient to support a judgment of condemnation. Churches destined to public service are the property of the nation represented by the federal government, which shall designate those that are to continue to serve the purposes of religion. All buildings destined for religious purposes pass to the ownership of the nation, to be used exclusively for the public services of the state, and churches built in the future for public service will become the property of the nation. Article 27 of the former constitution expressly prohibited ownership of lands or of capital loaned upon it by religious corporations or institutions, except buildings "immediately and directly destined" to their services or purposes. The new article, then, adopts the old principle, modifying it only by creating a more effective means of enforcement and by extending it to the excepted buildings. Many churches, however, have been taken by the nation since 1859, and have been used on sufferance for religious service, so that this provision extends to all religious edifices a régime already applied in part.²

¹ Okla. XXII, 1; See also Cal. I, 17; Wash. II, 33; Miss. IV, 84; Fla. Declaration of Rights 18; Kansas Bill of Rights 17; Colo. II, 27.

² Cabrera, *op. cit.*, citing The Reform Law, secs. 14-16.

Public and private charitable or mutual-aid institutions may acquire, hold and administer capital loaned upon real estate for terms of not over ten years only, and it is expressly provided that such institutions shall not be under the patronage, supervision or administration of religious institutions or of ministers of any cult. They may apparently own real estate of any sort as they might by Article 701 of the civil code and Article 27 of the former constitution. By former Article 27 such institutions could not own real estate or loans made upon it if they were connected with religious corporations or institutions.

The constitution looks with disfavor on even non-religious corporations as land holders. One reason for this is said to be the difficulty of preventing church ownership through private corporations,¹ and another the tendency to monopolize large tracts in their hands.

Section 4 of paragraph 11 of Article 27 prohibits commercial corporations from acquiring, possessing (*poseer*) or administering country lands. Large tracts of land are held in the republic by such corporations for cattle ranches, rubber, coffee or cotton plantations, and recently for colonization purposes. Both foreign corporations which have gone through the formalities required by the Mexican law, and Mexican corporations, hold such properties; but without doubt in regard to foreign and probably also in regard to most Mexican corporations the stockholders are foreigners, chiefly, it is probable, Americans. This article, therefore, will concern chiefly foreigners. It clearly prohibits the holding or administration of country real estate, but it is not clear as to ownership. The word *poseer* is used also in regard to the property of the church in section 2, but is followed there by a special provision that church property shall pass at once into the ownership [*dominio*] of the nation. Section 5 forbids banks to own real property and uses the expression *tener en propiedad*, holding in ownership, not *poseer*. *Tener en propiedad* is also the term used to denote ownership in section 7. *Dominio* means ownership in paragraph 2 and

¹ Cabrera, *op. cit.*, p. 8. Report of V. Carranza to the Constitutional Convention, published by the Latin-American News Company, New York, p. 11.

in section 1 of the article; it is also used in section 700, civil code. The expression *propriedad* means right of property in paragraph 1 of the article and also in section 697, civil code. It would seem, therefore, a possible construction of section 4 that it does not deprive corporations now owning land of their property rights, but merely prohibits acquisition of such ownership in the future, and obliges them to have the property now owned held and managed by an individual who can be reached more easily by administrative or court process. This interpretation of the word *poseer* fits into the language of section A in the next to the last paragraph of the article, where corporations legally constituted are treated as owning [*ser dueño*] country land in large estates.

If this be not so, and the article is a prohibition of ownership, it is noteworthy that there is no express transfer of the property to the state as in the case of church lands. If the stockholders are Mexicans, then, it would seem that they would become owners of the property with power to manage it as they please; so they can, by means of an agreement, continue to operate practically as before. If, however, the stockholders be foreigners, the situation is different, for foreigners cannot acquire ownership in lands except on expressly abandoning the protection of their own government. If the property is in the frontier and coastal forbidden zone they can in no case become owners. Legislation is necessary to clear up this condition and at least to provide as to the forbidden zones for a receivership during a limited period for these properties. If pressed for sale under present conditions they will, of course, bring little or nothing, and the result will be practical if not technical confiscation. Such action would open up a great opportunity for a speculation which would not benefit Mexico either materially or morally.

Commercial corporations created for manufacturing, mining, oil development and any other non-agricultural purpose, may acquire, possess or administer as much land as is strictly necessary for their purposes in an amount fixed by the executive of the union or of the states, in each case. Oil companies which have purchased tracts of land in order to hold the oil right

under them will therefore lose their oil rights by the operation of the nationalization of the oil, and will lose the real estate as farm property by the operation of this paragraph, subject to the criticism of the provision in regard to ownership. Corporations formed to own or develop city property may continue their operations if the public authority permits.

The problem of peon ownership is not like that of the ownership of American farmers in the western states. Settlements of the peons, the Mexican peasants, are like their European prototypes, in villages, each with its common fields, with water for irrigation and household use, with pasture for cattle, and in the wooded country with common forests. The peon and the Indian do not live on isolated farms. They are community dwellers, and if peon ownership is to be built up, it must be developed in the way to which the peon is accustomed. Furthermore, small farming in much of Mexico depends upon irrigation, which makes isolated small farms impossible. Colonies or villages may be formed along streams where there is good land, or where water can be brought from large streams or lakes to bodies of rich land. On this system the new agrarian law of the Mexican state of Yucatan has proceeded, restoring to the existing communities their original land where it has been taken from them illegally, enlarging their community property where necessary by condemning parts of neighboring estates, first uncultivated then cultivated land, planting new communities in suitable spots on property also condemned from large owners where uncultivated or public lands are not available, thus slowly spreading out villages over the state, each with its market place, its school, its social interest, its opportunity for training in common action.¹ The policy of the old régime was to divide the community property among the members, and thus create individually owned holdings.² As a consequence, the ignorant individual owners frequently sold their farms to neighboring ranchers, thus losing their hold on what had been the home of

¹ See *Agrarian Law of Yucatan*, translated and published by the New York Latin-American News Association.

² Wheeler, Art. 866.

their families for generations, and becoming landless proletarians. Often, it is maintained, the property of the village was taken by illegal means, and the villagers were turned out without even the semblance of payment.¹ In either case the effect on the peon was the same—his land was gone. The revolution arose out of the agricultural and social problem thus created.

A process similar to that in force in Yucatan is foreshadowed in the part of Article 27 which refers to the creation of small farms. Existing communities may take by condemnation from neighboring estates the land required for the needs of their people, and new centers may be created in the same way. The price of the land is fixed by the tax assessment as in other cases of public utility, and the difficulties mentioned above will here be increased by the amount of property taken. The constitutionalists have steadily proclaimed their intention to restore to the peon communities the land held in common of which they have been deprived by legal or illegal means, and this has been accomplished in the constitution by taking such land from its present holders and returning it to the communities. Only lands which have been granted to community members in a legal division, or lands which have been owned for more than ten years, are excepted, and even here the excess over one hundred and twenty-five acres held by a single owner is to be returned to the community, its value being paid to the owner. Thus the Yucatan system is provided for by the constitution, and if the confiscation of church lands brings to the nation a large territory to be added to lands already owned by the nation, there would seem to be, at first at least, but little need for proceeding against privately owned estates in the interest of peon ownership, except where an old community needs land for expansion.

As a protection against the tendency of the peon to sell his rights for a little cash, common lands are made inalienable even after they have been divided among the members of the com-

¹ See "The President's Mexican Policy," by F. K. Lane, *New York World*, July 16, 1916.

munity. This limitation will make borrowing for development difficult; there is evidently need for a carefully organized agricultural banking system under close state or national control. In Yucatan a selling agency has been created for the chief product of the soil, sisal hemp. This agency monopolizes the sale and relieves the peon farmer of one of his chief difficulties. Whether there should be created in other states similar government or governmentally supervised agencies, perhaps a combination of the selling monopoly of Yucatan and the co-operative self-governing associations of the California citrus-fruit or walnut growers, will be an important problem and one far more difficult to solve in other districts, which do not depend on one product as does Yucatan.

Large areas in northern Mexico at least are not suited to these farming communities, and are fitted at the present time only for the business of stock ranching on a large scale. Even wells and sufficient water for stock are scarce, so that there are many large bodies of land which would be valueless unless the cattle upon them have access to water elsewhere. Agricultural communities are an impossibility on these tracts. If all the water in the streams and all the land capable of irrigation which might be used for small communities be taken away from the ranches, the business of cattle ranching would be seriously menaced. It is important for the operation of the ranch that the owner have an irrigated field in which he can grow alfalfa for feed for his horses and cattle, and a certain quantity of grain and beans for his men, so that he can be sure of his supplies without the great expense of hauling them over bad roads, or no roads at all, for long distances.

With these considerations in view it may be questioned whether the provisions of paragraph 11 of Article 27 are wise. This paragraph requires the legislatures of the states and the congress of the union for the territories to pass laws for the division of large estates. The maximum amount of land that a single individual or corporation may own [*ser dueño*] is to be fixed, and the excess divided by the owner, in a period determined by the law. The subdivisions must be put upon sale on conditions approved by the governor in accord with the laws,

and must be paid for in twenty annual payments which shall amortize the capital and pay interest at not to exceed five per cent. During this period the purchaser cannot encumber the property. The price must be approved by the governor if it is not fixed in the law, and there is, of course, no appeal to the courts by the owner against the price so fixed. A vigorous means of compulsion is provided by permitting the governor himself to divide the excess if the owner does not do so, after expropriating it as other property is taken for a public utility. In this case the proprietor will be obliged to take bonds of a special agrarian state debt in payment. If he is a foreigner this debt will be limited by the provisions of Article 117, section 8, prohibiting the contracting of obligations by the states in favor of foreign individuals or corporations if the contract obliges the state to emit bonds payable to bearer or transmissible by endorsement. Unless the constitution is modified, then, a foreigner whose land is condemned under this paragraph, or indeed is condemned by the states for any purpose, if the payment is not made in cash, must take state non-negotiable securities at par on a low basis of valuation. Evidently a proprietor will prefer to divide his own estate, as he will have a first lien on it for the purchase price, and presumably will be permitted to use it until it is purchased or occupied.

Furthermore, Article 12 of the transitory articles of the constitution gives to Mexicans who have fought in the constitutionalist army, to their widows and children, and to other persons who have served the revolution or public instruction, preference in the acquisition of the subdivisions provided for in Article 27; it also gives these classes a right to "*the discount provided by the law.*" This expression, "the discount provided by the law," should be cleared up. There can be, of course, no reasonable objection to a preference being given to these classes of persons, but discounts in their favor may well be so large that the result of the act will be confiscation. An owner may, of course, refuse to divide his land, suffer condemnation and take bonds of the state in payment; but this, as has been pointed out, is a doubtful expedient for him.

The operation of this section will not be in the main to favor small properties and certainly not to favor peon proprietorship, which is provided for in a different way, as we have seen. Large ranches must be subdivided into large subdivisions, as in the main they are fit only for pasturage, and there could be no buyers for small tracts owing to scarcity of water and the difficulty of operating small ranches. The cost of stocking the ranches will also be very great, and as the properties cannot be encumbered for a twenty-year period, except where they have been condemned by the state, it will not be easy to borrow sufficient money to build houses and to stock and improve the ranches. Frequently, also, owing to a shortage of water for irrigation, there will be no place on even so large a tract for the establishment of a homestead and for the growing of alfalfa, corn or other feed for horses. Consequently, as there is no provision in the law prohibiting the lease of these properties or prohibiting a single individual from leasing as much land as he pleases, the result of the operation of this paragraph will frequently be that the purchasers of the subdivisions will lease to the original owners, or that a number of the subdivisions will be combined in the hands of a new lessee, thus permitting the lessor to live in town on his income. The tenant, of course, will not feel the same interest in sinking wells, introducing better stock to improve the quality of the cattle, and making other improvements, so that the probable result of the section will be not to hasten but to retard the development of northern Mexico. Would it not be wiser by equalizing taxation,¹ by preventing unfair discrimination by the railroads in favor of politically powerful or large ranchers, by prohibiting monopolies of the privilege of slaughtering cattle in the cities, and by giving government aid in the improvement of herds and methods of agriculture, to let the problem of the great estate solve itself as it is doing in California² through the economic advantages of the smaller ranch in a better developed country?

¹ See N. Mex. VIII, 6.

² See Calif. XVII, 2.

IV. *Concessions*

The control over minerals and practically all waters important for irrigation or power is in the national government, which alone may grant concessions to work mines or develop waters under the federal control.¹ In congress, too, is vested all power to legislate in regard to minerals and waters under federal jurisdiction.² All concessions in the future are expressly made subject to law, so that they will not, it would seem, be protected by Article 14 against retroactive legislation so far at least as operations under the concessions are concerned. Congress may regulate the exercise of concessions to "secure a fair distribution of the public wealth and to provide for its conservation." An extensive police power is thus retained over the right of the concessionaire, a power which extends to grants already made. In the future, concessions may be given to Mexican citizens or Mexican corporations or to foreign individuals who agree not to invoke the protection of their governments in respect to the grant;³ but Mexican citizens must be preferred in applications for concessions⁴—a provision not found in the old constitution.

The concluding paragraph of the article declares subject to revision all contracts and concessions granted by previous governments since the year 1876 which result in the monopolization of lands, waters and the natural wealth of the nation by a single person or corporation. It gives power to the executive of the union to declare null any such contract or concession which implies grave prejudice to the public interest. This paragraph would seem to complete the provision of paragraph 3 that the nation may regulate the utilization of natural elements susceptible of appropriation in order to secure an equitable distribution of the public wealth and to assure its conservation. Practically every contract for the utilization of a waterfall is or may be considered a monopoly in that the grant includes the right to utilize all the water at a given point; and frequently, as waterfalls are not very common in many regions of Mexico, it

¹ Art. 27.² Art. 73, XVII.³ Art. 27.⁴ Art. 32.

implies also monopoly of all the water power in a considerable district.

Mining concessions in Mexico are based on what is called a *pertinencia* or mining claim of about two and one-half acres; but practically all of the large mining companies own a great many *pertinencias*, some of which are being operated while others are held in reserve for future exploitation. The extensive examination and development necessary for quartz mining is possible only on the basis of ownership of a large number of *pertinencias*, the number varying with the richness of the ore, so that the task of determining what is a monopoly must be undertaken in a broad way or the mining industry in Mexico will be seriously hampered if not destroyed. Oil concessions are of course very extensive, and what may be considered a monopoly is uncertain. It is not necessarily a public advantage to have a large number of wells bored on a small territory and to prevent a reasonable reserve for the operating company. Operation by a large number of small companies may well make a proper and economical utilization of the gas and by-products of the oil difficult, and in fact be more harmful to the conservation and proper use of the public wealth and more disadvantageous to the public interest than operation by a large corporation under reasonable regulations. Congress can act arbitrarily, the courts are bound by its decision, and while in many cases reforms in concessions will be beneficial, the great delicacy of the situation points to deliberate action after a fair consideration of each case. A committee to study the whole subject, to hear testimony, and to visit the districts and properties, should promptly be provided, and no sweeping action should be taken till it reports.

The congress must, under its general power to legislate, declare what constitutes a monopoly, before executive action can be taken, except in the event that the executive concludes that the concession results in a monopoly which gravely endangers the public interest. He can then, without action of congress, decide what constitutes a monopoly and what monopolies endanger the public interest. After congress has acted, however, it might be held that the president is limited by the congres-

sional decision, and that his arbitrary power will then extend only to the decision whether the monopoly endangers the public interest. The executive has at his disposal ample means to investigate and he is not pressed or hurried. Haste must often mean unjust action. In some cases, perhaps in many, his arbitrary power, hinted at rather than used, can secure the consent of the concessionaires to much-needed and reasonable reforms, but such absolute power cannot help arousing suspicion; it lays a duty on its possessor to be just, and to act only after due investigation and with the widest publicity. The process of *amparo*¹ can perhaps be used to restrain the executive while the courts examine whether his action is arbitrary and not justified by the facts as possibly endangering the public interest, but it is probable that the courts will not interfere with the exercise of this prerogative. This great power over private rights, combined with that to limit the amount of real estate which certain corporations may hold, suggests the importance of an administrative court with a regular procedure and machinery for public hearings to advise the executive as to his action.

Article 27 lays a heavy responsibility on the congress and the executive. Many of its provisions, in particular the concluding paragraph, depend upon legislation for their interpretation, and the laws, not the constitution, will be at fault if unfairness result. The necessity for careful study of the problems involved in applying fairly the fundamental law is increased by the unrest and the intense feeling resulting from the late revolution, and the study is rendered far more difficult. Delay is often interpreted as obstruction by zealous reformers, but there is no more dangerous expedient in statesmanship than too hasty acceptance of ready-made law, and time spent in fitting proposed measures to actual conditions is time gained and not time wasted.

There is a strong and not unreasonable tendency shown in the constitution and in the spirit which is now triumphant in Mexico to advantage Mexicans where possible. "Mexico for the Mexicans" is not an unfair motto; but those who proclaim

¹ Art. 107.

it and declare that it means progress for country and people must not forget that Mexicans must be fitted for a Mexico which is in the center of an age of great agricultural and commercial progress. Education not in science and the arts alone, but in technology, handicrafts and agriculture, is a vital necessity, if the soil is to sustain a prosperous class of small farmers, if the men upon whose skill and attention to duty rest the lives of many human beings as well as the success of great properties, are to be trained to operate the railroads and the machinery in the mines and factories, if a class of skilled workmen who can compete with foreigners is to be created in the cities. Furthermore, Mexicans of business ability and initiative must come forward to assume the responsibility of development and management of great enterprises, men who can command the confidence of the foreign capital needed in Mexico as in every new country. Without these leaders and without trained subordinates legal advantages will avail the people little.

A modern state with the mining and manufacturing possibilities of Mexico cannot rest upon a class of peon farmers alone. Important as this class is to the safety of the state, the middle class of business men and mechanics is not less weighty, and upon its development as an intelligent and effective class depends in the end the stability of the free Mexican republic. The education of the Mexican peon, even as a free farmer, to the responsibilities of citizenship, will be slow, so that the burden of the government of free Mexico in the near future must rest upon this middle class, and no effort to build it up can be too great. The interesting and important sections of the constitution dealing with labor must be interpreted in legislation with this end in view, and the commercial and industrial interests of the country must be given a prominence whose necessity up to the present time does not seem to have been appreciated in the United States or in Mexico itself.

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